Message 201

Communication from the Commission - TRIS/(2024) 0211

Directive (EU) 2015/1535

Notification: 2023/0554/IT

Forwarding of the response of the Member State notifying a draft (Italy) to of European Commission.

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2. Italy

3A. Ministero delle imprese e del Made in Italy
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4. 2023/0554/IT - SERV30 - Media

5.

6. 1. Detailed opinion issued pursuant to Article 6(2) of Directive (EU) 2015/1535.

1.1. Assessment of Article 1(28) of the notified draft in light of Article 3 of Directive 2000/31/EC, Article 28a of Directive 2010/13/EU and Regulation (EU) 2022/2065.
With regard to the issues relating to the obligations of video-sharing platform providers and, in particular, their interaction and compatibility with Directive 2000/31/EC on electronic commerce (e-Commerce Directive) and Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 on audiovisual media services (AVMSD), the Commission, in light of the information received from the Italian authorities and the recent case law of the CJEU – taking into account Article 3 of Directive 2000/31/EC and Article 28a of Directive 2010/13/EU – considers that the application of Article 41(12) of Legislative Decree No 208/2021 may constitute a restriction on the freedom to provide information society services, prohibited under Article 3 of the e-Commerce Directive.
In particular, the Commission notes some critical issues in the obligations imposed on video-sharing platforms identified in the aforementioned Article 41(12) of Legislative Decree No 208/2021 in relation to the AVMSD and, in particular, the country of origin principle laid down in Article 28a thereof; the latter provision provides that that principle may be waived for video-sharing platforms only within the limits laid down in Article 3 of the e-Commerce Directive, in accordance with the procedural and substantive criteria introduced by that article.
This having been noted, with reference to the provision contained in Article 41(12) of Legislative Decree No 208/2021, it should be noted that this measure is not addressed to the established VSP (Video-sharing platform) provider, or which is deemed to have been established under Article 28a of the AVMSD, but to an Italian undertaking that is controlled by or is part of the same group as a video-sharing platform provider operating or considered to be active in another Member State. Therefore, the relevant measures provided for therein are addressed only to that undertaking, which, as it falls under Italian jurisdiction, would not conflict with European legislation.
Nevertheless, given that those rules already operate under Article 28a of the AVMSD, in order to ensure full

harmonisation of that provision with the country of origin principle and with the limits laid down to waive that principle under Article 3 of Directive 2000/31/EC and to avoid any possible and potential conflict between national and European provisions, as feared by the European Commission, the Italian Authority will remove Article 41(12) of the draft technical regulation.

1.2. Assessment in light of Regulation (EU) 2022/2065 and Directive 2010/13/EU
With regard to the issues relating to the obligations of video-sharing platform providers and, in particular, their interaction and compatibility with Regulation (EU) 2022/2065 (Digital Services Act, DSA), as well as Directive 2000/31/EC on electronic commerce (e-Commerce Directive) and Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 on audiovisual media services (AVMSD), the Commission points out that Article 41(12) of the draft technical regulation falls within the areas fully harmonised by the DSA.

On this point, as already mentioned, the Italian Authority will delete paragraph 12 of Article 41 of the draft technical regulation in order to avoid undue overlap or contradiction with the European regulatory framework.
The Commission also notes that Article 1(4)(a) of the notified draft technical regulation may be contrary to the principles already enumerated in the DSA, which already contains provisions on the protection of minors on online platforms in Articles 28, 34 and 35.
In that regard, it should be noted that, pursuant to Article 2(4) of the DSA, according to which the provisions of the DSA itself do not affect Directive 2010/13/EU, it was considered that the principles set out in Article 4(1) of the draft technical regulation may be applied to platform services for the sharing of audiovisual or even just audio content that are not classified as large-scale, since the latter do not fall within the scope of the DSA, as is apparent from Article 19(1) of the DSA.
Therefore, in order to avoid overlaps or contradictions with European legislation, the Italian Authority, with greater explanatory effort, will explicitly clarify in the text of this provision that Article 4(1) of the notified draft applies only to micro and small enterprises, which are not subject to the scope of the DSA.
Article 4(1) will therefore be worded as follows:
1. The system of audiovisual media services, radio and platform services for sharing video or even just audio, whose providers qualify as micro-enterprises or small enterprises as defined in Recommendation 2003/361/EC, shall comply with the following principles, to ensure that users:
a) freedom and pluralism of the broadcasting media;
b) freedom of expression of every individual, including freedom of opinion and the freedom to receive or communicate information or ideas without borders, respecting human dignity, the principle of non-discrimination and combating hate speech;
c) objectivity, completeness, loyalty and impartiality of information;
d) countering disinformation strategies;
e) protection of copyright and intellectual property rights;
f) openness to different political, social, cultural and religious views and tendencies;
g) safeguarding ethnic diversity and cultural, artistic and environmental heritage, at a national and local level, respecting freedoms and rights, in particular individual dignity and the protection of personal data, the promotion and protection of well-being, health and harmonious physical, mental and moral development of the child, guaranteed by the Constitution, by European Union law, by international standards in force in Italian law and by state and regional laws.
h) fighting the contemporary tendency to destroy or otherwise reappraise the elements or symbols of the history and tradition of the nation (cancel culture).

2. Comments made pursuant to Article 5(2) of Directive (EU) 2015/1535.

2.1. Assessment in light of Regulation (EU) 2022/2065 – Interaction and compatibility with the DSA
The European Commission, in accordance with Article 5(2) of Directive (EU) 2015/1535, makes comments on the interaction and compatibility of Articles 41 and 42 of Legislative Decree No 208/2021 with Regulation (EU) 2022/2065 on Digital Services (DSA), reiterating that the DSA is an EU regulation that fully harmonises digital services legislation and, as such, is of general application, binding in its entirety and directly applicable in all Member States (Article 288 TFEU).

On this point, the Italian Authority acknowledges that national rules cannot influence the scope of the Regulation and in order to ensure that they do not create legal uncertainty or incompatibility with the principle of direct applicability of the DSA will amend Article 1(28) and (29) of the notified draft, which amends Article 41 and 42 respectively of Legislative Decree No 208 of 8 November 2021, deleting the parentheses that 'Articles 6 and 8 of the EU Digital Services Regulation 2022/2065 shall apply to video-sharing platform providers established in Italy under the preceding sub-paragraphs' and 'Without prejudice to Articles 6 and 8 of Regulation EU 2022/2065', wherever they are present, as well as the closing provision provided for in Article 67(13) and Article 71(5a) of the draft.

We also agree with the Commission's observation of formally repealing the measures transposing Articles 12 to 15 of the e-Commerce Directive into Italian law, repealed and replaced by Articles 4 to 8 of the Law on electronic commerce.
The Italian authority will therefore insert in Article 3 of the notified draft, containing 'final provisions', a further paragraph repealing Articles 14 to 17 of Legislative Decree No 70 of 9 April 2003 on 'implementation of Directive 2000/31/EC on certain legal aspects of information society services in the internal market, with particular reference to electronic commerce'.

Finally, with regard to the conflict with Article 1(4) of the notified draft with Article 8 of the DSA, see the above in point 1.2.

2.2. Assessment in light of Directive 2010/13/EU on the application of direct investment obligations to 'cross-border video-on-demand services' and Article 13(2) of the AVMS Directive.
The European Commission, pursuant to Article 5(2) of Directive (EU) 2015/1535, also makes observations on the rules governing direct investment obligations for 'cross-border video-on-demand services' (Article 55(8) of Legislative Decree No 208/2021).
With reference to point (i), thresholds for direct investment in the production of European works, the European Commission considers the contributions requested from VOD suppliers to be disproportionate, given that 'the high and potentially unlimited proportion of Italian-language works ('not less than 50 per cent') could have the effect of creating an advantage for production companies working in Italian and which, as a result, can, in practice, mainly include companies established in Italy',
On this point, it should be borne in mind that the relevant national provisions provide for specific planning and investment obligations for operators in European works as well as original Italian-language works by independent producers, depending on the development of the European and national cultural industry and the internal audiovisual market, and, in particular, small and medium-sized enterprises, offering new opportunities and outlets to stimulate creative talent.
The Italian Authority, in developing the final text of the draft technical regulation, in continuing the process of adopting the text has introduced a more organic discipline relating to the promotion of European works, including in on-demand audiovisual media services, with a view to greater simplification and rationalisation of the provisions, also in order to meet the needs expressed by the operators during the public consultations.
In order to overcome the complicated and burdensome regime of obligations for media service providers (linear and non-linear) to promote European audiovisual works and independent producers, the possibility of introducing additional programming and investment sub-quotas in addition to those already set by TUSMAV is eliminated and the possibility of increasing the minimum percentage envisaged is excluded. In particular, the percentages of the various sub-quotas relating to programming and investment obligations are crystallised, removing the reference to the minimum limit of percentage thresholds provided for in Articles 53, 54 and 55 (with the deletion of the terms 'at least' or 'not lower' in particular in Article 53(2), Article 54(2), (3), (5), (7), and Art. 55(2) and (8) of Legislative Decree No 208/2021) related to the requirements for programming and investment in European works of linear media service providers, as well as eliminating the possibility of introducing new ones.
Consequently, the need for the provision of a subsequent regulation, initially envisaged for this purpose, also ceases.
Therefore, with regard to the Commission's observation, it is considered that the uncertainty surrounding the matter is overcome by the elimination of the possibility for a government regulation to provide for increasing changes, both in quantitative and qualitative terms, to the quota system.
With regard to the proportionality of the thresholds identified, we would like to point out that the Italian Authority intended to pursue the legitimate public interest of cultural and linguistic diversity in view of the high historical, cultural,

landscape and artistic heritage that characterises the history, traditions, cultural and linguistic roots and, therefore, the specific identity of the Italian nation, widely recognised and regarded in the world.
To that end, the quotas set out in Articles 53, 54 and 55 of the draft technical regulation shall be deemed proportionate and necessary for the purposes pursued.
With reference to point (ii), on the legislation on the further development of the definition of original Italian-language audiovisual works and their percentage share; potential under additional quotas, please see the following.
Unlike the French regulatory system, the definition of 'original Italian-language work', as introduced by Interministerial Decree No 47 of 29 January 2021 (Annex 2), which is attached, has a very wide scope as it relates not only to works in the Italian language, produced by an Italian company, but also and above all to several objectively identified factors, relating to situations characterised by certain requirements or parameters (such as culture, history, Italian identity, creativity and originality, places, scenography, setting, photography, participation of Italian companies in various stages of production, according to the criteria laid down and detailed in the aforementioned interministerial decree, etc.) that must be the subject of specific assessments and evaluations by the competent Italian authority, regardless of the undertaking that makes them.
Therefore, the percentage of original Italian-language works, within the overall percentage established for European works, does not have the effect of benefiting from a purely subjective point of view, and as a preliminary ruling, only companies working in Italian language, but rather of achieving, from an objective point of view, the legitimate public interest in cultural, linguistic, archaeological, architectural diversity, etc., able to identify the specificity of Italian heritage.
With regard to the criteria to be used for developing the definition of original Italian-language work, the same are set forth in the above mentioned Ministerial Decree, which is attached.
Moreover, as already mentioned above, with regard to the issue of potential additional sub-quotas, we would point out that the Italian Authority, in order to avoid the complicated reference to further implementing decrees for the determination of sub-quotas, has removed the provision that, in subsequent inter-ministerial regulations, the contractual arrangements for fulfilling the planning and investment obligations may be regulated for certain types of works.
With this in mind, all sub-quotas were determined at a fixed rate of 50 %, with the exception of the sub-quota referred to in paragraph 8 of Article 55 ('Obligations of providers of on-demand audiovisual media services') of the draft technical regulation, referring to original Italian-language works produced in the last five years by independent producers, set at 60 % to give greater emphasis to the dissemination of national artistic values and expression through the audiovisual work, taking into account the high reference cultural value.
In this way, with a general view to simplification and regulatory certainty, audiovisual media service providers will no longer have to cope with legal uncertainty as to how they should allocate their contributions to the promotion of audiovisual works and, therefore, they will be able to safely plan their investments in European audiovisual works for the medium and long term (Article 57(1) and (2) of Legislative Decree No 208/2021).
The above-mentioned rules reformulated during the adoption stages of the measure, approved in the first deliberation of the Council of Ministers on 19 December 2023 (Annex 3), are attached.
It is reiterated that the draft measure is still in the draft phase and that its final adoption will only take place following the final resolution of the Council of Ministers.

ANNEX 2

Ministry for Cultural Heritage and Activities and Tourism
Ministerial Decree No 47 29/01/2021
Regulation on the definition of original Italian-language audiovisual works, wherever produced, referred to in Article 44e of Legislative Decree No 177 of 31 July 2005 on the 'Consolidated Law on Audiovisual and Radio Media Services'.
Published in the Off. Journal No 84 of 8 April 2021.
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Ministerial Decree No 47 of 29 January 2021 (1).
Regulation on the definition of original Italian-language audiovisual works, wherever produced, referred to in Article 44e of Legislative Decree No 177 of 31 July 2005 on the 'Consolidated Law on Audiovisual and Radio Media Services'. (2)

(1) Published in the Off. Journal No 84 of 8 April 2021.
(2) Issued by the Ministry for Cultural Heritage and Activities and Tourism.

THE MINISTER FOR CULTURAL HERITAGE AND
ACTIVITIES AND TOURISM
AND
THE MINISTER
OF ECONOMIC DEVELOPMENT
Having regard to Law No 400 of 23 August 1988 on the rules governing the activities of government and the order of the Prime Minister's Office, and, in particular, Article 17(3), which governs the adoption of inter-ministerial decrees to regulate matters falling within the competence of several ministers;
Having regard to Legislative Decree No 177 of 31 July 2005 on the Consolidated Law on Audiovisual and Radio Media Services, and, in particular, Article 44e, which provides that, by one or more regulations of the Ministers for Economic Development and Cultural Heritage and Activities and Tourism, adopted pursuant to Article 17(3) of Law No 400 of 23 August 1988, as amended, after consulting the Communications Regulatory Authority, the following shall be established, on the basis of the principles of proportionality, adequacy, transparency and effectiveness:
a) the definition of Italian-language audiovisual works, wherever produced, with particular reference to one or more elements such as culture, history, identity, creativity, language, or places;
b) the sub-quotas reserved for the works referred to in letter a), pursuant to Articles 44a(2) and (3), 44b(1a), (2), (3a) and (4a) and 44c(5), of the same Legislative Decree No 177 of 2005, in any case to the extent not below the percentages provided for therein;
Having regard to Law No 220 of 14 November 2016 on 'Rules relating to the cinema and audiovisual';
Having regard to Legislative Decree No 204 of 7 December 2017 on 'Reform of the legislative provisions on the promotion of European and Italian works by audiovisual media service providers pursuant to Article 34 of Law No 220 of 14 November 2016';
Having regard to Decree-Law No 59 of 28 June 2019, converted, with amendments, by Law No 81 of 8 August 2019, and in particular Article 3 thereof on 'Urgent simplification and support measures for the cinema and audiovisual sector';
Having regard to the Decree of the Minister for Economic Development and the Minister for Cultural Heritage and Activities of 22 February 2013 on the 'Definition of original Italian-language cinematographic works and recognition procedure', published for information in the Official Journal of the Italian Republic No 54 of 5 March 2013;
Having regard to the Prime Minister's Decree of 11 July 2017 laying down 'Provisions for the recognition of the Italian nationality of cinematographic and audiovisual works', as amended;
Having regard to the Decree of the Minister for Cultural Heritage and Activities and Tourism of 14 July 2017 on 'Identification of cases of exclusion of audiovisual works from the benefits provided for by Law No 220 of 14 November 2016, as well as the parameters and requirements for defining the cinematic purpose of audiovisual works';
Having regard to the Decree of the Minister for Cultural Heritage and Activities and Tourism of 31 July 2017 laying down 'Application provisions on selective contributions referred to in Article 26 of Law No 220 of 14 November 2016';
Having consulted the Communications Regulatory Authority;
Having obtained the opinion of the Council of State, expressed by the Consultative Section for legislative acts in the

meeting of 3 September 2020;
Having regard to the communication to the Prime Minister, pursuant to Article 17(3) of Law No 400 of 23 August 1988, and subsequent amendments, by letter of 27 January 2021;
ADOPT
the following regulations:

Article 1 Definitions
1. For the purposes of this Regulation, the definitions laid down in Legislative Decree No 177 of 31 July 2005, Law No 220 of 14 November 2016, the Decree of the Minister for Cultural Heritage and Activities and Tourism of 31 July 2017 and this Article shall apply. In particular:
a) 'European works' are the works referred to in Article 2(1)(cc) of Legislative Decree No 177 of 31 July 2005;
b) 'audiovisual work' is the work referred to in Article 2(1)(a) of Law No 220 of 14 November 2016 and Article 2(2)(d) of the Decree of the Minister for Cultural Heritage and Activities and Tourism of 31 July 2017;
c) 'audiovisual work of Italian nationality' is the work referred to in Article 2(1)(h) of Law No 220 of 14 November 2016;
d) 'audiovisual work in international co-production' is the work referred to in Article 2(2)(f) of the Decree of the Minister for Cultural Heritage and Activities and Tourism of 31 July 2017;
e) 'audiovisual work of international participation' is the work referred to in Article 2(2)(g) of the Decree of the Minister for Cultural Heritage and Activities and Tourism of 31 July 2017;
f) 'audiovisual work of international production' is the work referred to in Article 2(1)(i) of Law No 220 of 14 November 2016 and Article 2(2)(h) of the Decree of the Minister for Cultural Heritage and Activities and Tourism of 31 July 2017;
g) 'predominantly financial participation' is the participation of an Italian company in the creation of an audiovisual work of international co-production, of international participation or of international production in which the artistic and technical contribution of the Italian company is less than the financial contribution of the undertaking itself, taking into account the economic value of the production, the possible provision of services by operators resident in Italy, and the possible creation of the work or part of it in Italy;
h) 'documentary' is the work referred to in Article 2(1)(d) of Law No 220 of 14 November 2016;
i) 'animation work' is the work referred to in Article 2(1)(g) of Law No 220 of 14 November 2016;
l) 'media service provider' is the natural or legal person referred to in Article 2(1)(b) of Legislative Decree No 177 of 31 July 2005;
m) 'linear audiovisual media service' or 'television broadcasting' is a service referred to in Article 2(1)(i) of Legislative Decree No 177 of 31 July 2005;
n) 'non-linear audiovisual media service' or 'on-demand audiovisual media service' is a service referred to in Article 2(1)(m) of Legislative Decree No 177 of 31 July 2005.

Article 2 Original Italian-language work
1. For the purpose of fulfilling the programming and investment obligations by providers of linear and on-demand audiovisual media services set forth, respectively, in Articles 44a, 44c and 44d of Legislative Decree No 177 of 31 July 2005, the original Italian-language work is the European work referred to in Article 1(1)(a) of this Regulation, which falls under at least one of the following types:
a) European works in which the direct sound recording is fully or to an extent equal to at least 50 % of the total minutes in Italian language or in Italian dialects; in the case of works set, even in part, in Italian regions where the linguistic minorities referred to in Article 2 of Law No 482 of 15 December 1999 reside, or in which there are persons from the same regions, the relevant languages are equivalent to the Italian language provided that the use of the language is strictly functional to the narrative needs of the work;
b) cinematographic, television and web works of fiction, animation and original documentary that have obtained recognition of Italian nationality pursuant to the Prime Minister's Decree of 11 July 2017 or the rules in force on the date of publication in the Official Journal of the Italian Republic of the same decree, with the exception of the works referred to in Article 1(1)(g), without prejudice to point (c) of this paragraph;

c) cinematographic, television and web works of fiction, animation and original documentary in which the participation of the Italian company is predominantly financial, as defined in Article 1(1)(g), which have obtained the recognition of co-production by order of the Directorate-General Cinema and Audiovisual of the Ministry for Cultural Heritage and Activities and Tourism and which meet at least one of the following requirements:
1) are created in the framework of an agreement between an Italian company and a foreign undertaking that provides for the subsequent creation of another work of international co-production or international production, in which the participation of the Italian company is greater than that of the non-Italian company and which possesses similar technical, artistic and economic characteristics and comparable to the work in question;
2) have original Italian-language content, with reference to elements of culture, history, identity, creativity and places, for a minimum score of 100 points based on the parameters set out in Table 1 and, for animation works only, in Table 2 annexed to this Regulation of which they form an integral part;
d) European works, other than cinematographic, television and web works of fiction, animation and original documentaries, which have original Italian-language content, with reference to elements of culture, history, identity, creativity and places, for a minimum score of 100 points based on the parameters set out in Table 1 annexed to this Regulation.

Article 3 Recognition of the status of original Italian-language work
1. Without prejudice to the provisions of paragraph 4, the fulfilment of the requirements for the classification of an original Italian-language audiovisual work shall be declared, with a specific application, by the cinematographic or audiovisual undertakings, by the producer, the distributor, the provider of audiovisual media services holding the rights to use the work or by the holder of the rights to use the work, by means of self-certification, issued in accordance with Chapter III – Section V of Presidential Decree No 445 of 28 December 2000, and transmitted to the Directorate-General Cinema and Audiovisual of the Ministry for Cultural Heritage and Activities and Tourism, on the basis of the model drawn up by the same Directorate and published on the institutional website within ten days of the effective date of this Regulation, containing the following indications:
a) fulfilment of the conditions laid down in at least one of the types of European works referred to in Article 2(2)(cc) of Legislative Decree No 177 of 31 July 2005;
b) fulfilment of at least one of the conditions laid down in Article 2 of this Regulation.
2. Within sixty days from the date of receipt, the Directorate-General Cinema and Audiovisual of the Ministry for Cultural Heritage and Activities and Tourism shall inform the interested parties whether or not the work meets the requirements of paragraph 1, letters a) and b). In the absence of notification within the prescribed period, the application shall be deemed to have been granted.
3. In response to this communication, the interested parties may propose, within fifteen days of receipt of the same, a request for review, on which the Directorate-General Cinema and Audiovisual of the Ministry for Cultural Heritage and Activities and Tourism shall decide within the following thirty days, after which the application is deemed to be accepted even in the absence of an express decision.
4. The designation of an original Italian-language work may also be carried out ex officio by the Directorate-General Cinema and Audiovisual of the Ministry for Cultural Heritage and Activities and Tourism, having verified that the requirements laid down in this Regulation have been met.

Article 4 List of original Italian-language works
1. The Directorate-General Cinema and Audiovisual of the Ministry for Cultural Heritage and Activities and Tourism shall promptly include the original Italian-language works in a special list, published on the Management’s institutional website. The inclusion of a work in the list only has the value of public disclosure.

Article 5 Financial invariant clause

1. The implementation of this regulation shall not impose any new or greater burdens on the State budget.

Article 6 Final and temporary provisions
1. Articles 3 and 4 of this Regulation shall take effect from the 60th day following the date of publication in the Official Journal of the Italian Republic.
2. With effect from the date of entry into force of this Regulation, Article 1 of the Interministerial Decree of 22 February 2013 on 'Definition of original Italian-language cinematographic works and recognition procedure' is repealed.
3. Applications for recognition of the status of an original Italian-language work, already submitted pursuant to Article 1 of the Interministerial Decree of 22 February 2013 and not yet defined on the date of entry into force of this Regulation, may be resubmitted in accordance with the procedures laid down in this Regulation.
This Decree, bearing the State seal, shall be included in the official collection of legal acts of the Italian Republic. All interested parties shall be bound to observe and ensure observance of this decree.

Table 1
Requirements for the recognition of the status of original Italian-language work for works referred to in Article 2(1)(C) and (D)
Download the file

Table 2
Requirements for the recognition of the status of original Italian-language work for the animation works referred to in Article 2(1)(C)
Download the file

ANNEX 3
RULES ON THE PROMOTION OF ITALIAN AND EUROPEAN WORKS BY SUPPLIERS:

Article 52 – (General principles for the protection of European and independent audiovisual works) –
1. Providers of audiovisual media services, whether linear or on-demand, shall promote the development and dissemination of European and independent audiovisual production in accordance with European law and the provisions of this Title.

Article 53 – (Obligations of programming of European works by providers of linear audiovisual media services) –
1. Providers of linear audiovisual media services reserve most of their broadcasting time, excluding time spent on news, sports events, television games, advertising, teletext services and teleshopping, to European works.
2. For Italian-language works, wherever produced, a sub-quota of the European works quota referred to in paragraph 1 shall be reserved to the extent of:
a. half, for the concessionaire of public radio, television and multimedia services;
b. a third, for other providers of linear audiovisual media services.
3. In the time slot from 6:00 p.m. to 11:00 p.m., the public radio, television and multimedia service concession company shall reserve at least 12 % of the broadcasting time, excluding time for news, sports events, television games, advertising, teletext and teleshopping services, to cinematographic and audiovisual fiction and animation works, as well as original, Italian-language documentaries, wherever produced. At least one quarter of this quota shall be reserved for Italian-language cinematographic works, wherever produced.
4. The quotas and percentages referred to in paragraphs 1, 2 and 3 shall be respected on an annual basis.

Article 54 – (Obligations to invest in European works of linear audiovisual media service providers) –

1. Linear audiovisual media service providers, other than the public radio, television and multimedia service concession company, shall reserve a share of their annual net revenue in Italy of not less than 12.5 % for the pre-purchase or the purchase or production of European works produced by independent producers. These revenues are those that the obliged entity derives from advertising, teleshopping, sponsorship, contracts and agreements with public and private entities, public provision and pay TV offers of non-sports programmes for which it has editorial responsibility, in accordance with the additional specifications contained in the Authority's regulations.
2. A sub-quota equal to half of the quotas referred to in paragraph 1 shall be reserved for Italian-language works, wherever produced, by independent producers in the last five years.
3. Linear audiovisual media service providers other than the public radio, television and multimedia service concession company, taking into account the schedule, shall also reserve for Italian-language cinematographic works, wherever produced by independent producers, a sub-quota of the quota for European works referred to in paragraph 1 of 3.5 % of their annual net revenue, as defined in paragraph 1. A percentage of 75 % of this quota shall be reserved for Italian-language works wherever produced by independent producers in the last five years. The provisions referred to in this paragraph shall not apply to parties that programme cinematographic works in a non-significant and marginal manner, according to annual threshold criteria contained in the Authority's regulation.
4. The public radio, television and multimedia service concession company reserves a quota of its total annual revenue of not less than 17 % for the pre-purchase or purchase or production of European works produced by independent producers. This revenue is that deriving from the licence fee for the broadcasting offer, as well as the advertising revenue related to the offer, net of the income from agreements with the public authority and the sale of goods and services, and according to the additional specifications contained in the Authority's regulation.
5. A sub-quota equal to half of the quotas referred to in paragraph 4 shall be reserved for Italian-language works, wherever produced, by independent producers in the last five years.
6. The public radio, television and multimedia service concession company, taking into account the schedule, shall also reserve a sub-quota of the quota for European works referred to in paragraph 4, equal to at least 4.2 % of its total net revenues, as defined pursuant to paragraph 4, to Italian-language cinematographic works, wherever produced by independent producers.
7. 85 % of the quotas referred to in paragraph 6 shall be reserved for the co-production or pre-purchase of Italian-language cinematographic works wherever produced by independent producers
8. The public radio, television and multimedia service concession company reserves an additional sub-quota of not less than 7 % of the quota for European works referred to in paragraph 4, for works produced by independent producers and specifically intended for minors of which at least 65 % shall be reserved for animated works.
9. The provisions referred to in this Article shall not apply to entities with a small turnover or audience, in accordance with the threshold criteria contained in the Authority's regulation.
10. The provisions of this Article shall also apply to providers of linear audiovisual media services that have editorial responsibility for offers addressed to consumers in Italy, even if established in another Member State.

Article 55 (Obligations of on-demand audiovisual media service providers) –
1. All catalogues of on-demand audiovisual media service providers subject to Italian jurisdiction must consist of at least 30 % European works that are highlighted.
2. On-demand audiovisual media service providers under Italian jurisdiction shall promote the production of and access to European works by respecting at the same time:
a. the obligations to program European audiovisual works produced within the last five years, not less than 30 % of the titles in its catalogue, as provided by the Authority's regulation. For providers of on-demand audiovisual media services which provide for the payment of a specific fee for the use of individual programmes, the obligation to schedule European audiovisual works produced in the last five years shall not apply;
b. the investment obligations in European audiovisual works produced by independent producers equal to 20 % of their annual net income in Italy, as provided for by the Authority's regulation.
3. The obligations referred to in paragraph 2(b) shall also apply to providers of on-demand audiovisual media services who have editorial responsibility for offers addressed to consumers in Italy, even if they operate in another Member State.
4. The Authority shall regularly draw up a report on the implementation of paragraphs 1, 2 and 3 to be submitted to the European Commission every two years.

5. The requirement for media service providers targeting consumers in Italy referred to in paragraphs 1, 2 and 3 does not apply to media service providers with a small turnover or audience, pursuant to the threshold criteria contained in the Authority's regulation. The waiver of those requirements shall also apply where the requirements are impracticable or unjustified due to the nature or subject-matter of the audiovisual media services.
6. The Authority's regulation referred to in this Article shall, inter alia, provide for the manner in which the audiovisual media service provider shall adequately highlight European works in the catalogues of the programmes offered and shall define the quantification of obligations with respect to European works produced by independent producers.
7. The Authority's regulation referred to in this Article shall be adopted mutatis mutandis in accordance with the provisions of Articles 52, 53, 54 and 56, as well as the principle of the promotion of European audiovisual works. In particular, the Regulation, when defining the arrangements for the fulfilment of programming obligations, provides, irrespective of any methods, processes or algorithms used by providers of on-demand audiovisual media services for the customisation of user profiles, including the adoption of tools such as the provision of a dedicated section on the main access page or a specific category for searching for works in the catalogue and the use of a quota of European works in advertising or promotion campaigns for the services provided. For on-demand audiovisual media service providers that require the payment of a specific fee for the use of individual programmes, the methods for fulfilling the obligations also include granting the holder of the right to remuneration linked to the commercial success of the work and the costs incurred for the digital distribution of the work on the digital platform.
8. A quota of 60 % of the percentage for European works stipulated in paragraphs 1, 2 and 3 respectively shall be reserved for Italian-language works, wherever produced, in the last five years, by independent producers, of which one fifth shall be reserved for cinematographic works of the same characteristics.
9. The provisions of Articles 53 and 54 shall apply to providers of linear audiovisual media services, which achieve not less than 80 % of their annual net income from that activity and who also carry out the activity of providing on-demand media services.

Article 56 – (Attributions of the Authority) –
1. One or more regulations of the Authority, issued in its capacity as an independent regulatory authority, shall also lay down:
a) the specifications relating to the definition of an independent producer referred to in Article 3(1)(t);
b) the further definitions and specifications of the items that are included in the net income and total annual revenue referred to in Article 54(1) and (4), with particular reference to the calculation methods in the case of aggregate offers of paid content attributable to entities that are at the same time providers of audiovisual media services and commercial platforms, without prejudice to compliance with the principle of editorial responsibility;
c) without prejudice to the provisions of Article 57(3), the technical arrangements for the fulfilment of the obligations referred to in Articles 53, 54 and 55, taking into account the development of the market, the availability of the works, as well as the types and characteristics of audiovisual works and the types and characteristics of the schedules and editorial lines of audiovisual media service providers, with particular reference, in the case of schedules that include cinematographic works, to European cinematographic works;
d) measures aimed at strengthening market mechanisms for increased competition, including through the adoption of specific rules aimed at avoiding situations of conflict of interest between producers and agents representing artists and to encourage the plurality of publishing lines;
e) the procedures aimed at ensuring both the adoption of simple and transparent mechanisms in the relations between audiovisual media service providers and the Authorities, including through the preparation and online publication of the appropriate forms, and an effective monitoring and control system;
f) the details of the investigation procedure and the graduation of the formal reminders to be communicated prior to the imposition of the penalties, as well as the criteria for determining those penalties on the basis of the principles of reasonableness, proportionality and appropriateness, also taking into account the differentiation between planning and investment obligations.
2. Audiovisual media service providers may apply to the Authority for waivers to the obligations referred to in this Title, stating the reasons therefore and providing any useful supporting evidence where one or more of the following circumstances arise:
a) the thematic nature of the schedule or catalogue makes it impossible to comply with the quotas referred to in this Title;

b) the audiovisual media service provider has a market share or turnover below a certain threshold set by the Authority by regulation;
c) the audiovisual media service provider has not made any profit in each of the last two years of operation;
d) the obligations are, in any case, impracticable or unjustified in light of the nature or subject-matter of the audiovisual media service provided by certain providers.
3. The obligations under this Title shall be checked on an annual basis by the Authority in accordance with the procedures and criteria laid down by the Authority in its own regulation. In any event, where an audiovisual media service provider has not fully discharged its obligations during the year in question, any missed quota, within a maximum of 15 % of the quota due in that year, shall be recovered in the following year in addition to the obligations due for that year. Where the audiovisual media service provider has exceeded the quota due annually, the excess quota may be counted for the purpose of achieving the quota due in the following year.
4. For the purposes referred to in paragraph 3, the Authority shall annually inform each audiovisual media service provider of the achievement of the annual quota or any missed quota to be recovered in the following year or any exceeding of the quota to be counted in the following year.
5. The penalties referred to in Article 67 shall remain valid in the event of non-recovery of the missed quota in the following year or an annual deviation of more than 15 % of the quota due in the reference year.
6. The Authority shall submit to the Chambers, by 31 March each year, a report on the fulfilment of obligations for the promotion of European and Italian audiovisual works by providers of linear and pay audiovisual media services, the measures taken and the penalties imposed. The report also provides micro and macroeconomic data and indicators of the sector that are relevant for the promotion of European works, such as production volumes in terms of hours broadcast, turnover of production companies, revenues from audiovisual media services, the quota and indication of European and Italian-language works in the schedules and catalogues, the number of employees in the audiovisual media services production sector, the international circulation of works, the number of waivers requested, accepted and rejected, together with the reasons for this, as well as the summary tables indicating the percentages of the investment obligations fulfilled by the various providers offering services to the Italian public, with the relevant European and Italian-language works.

Article 57 – (Provisions applying to Italian-language audiovisual works) –
1. By Regulation of the Ministers of Enterprises and Made in Italy and Culture, adopted pursuant to Article 17(3) of Law No 400 of 23 August 1988, after consulting the Authority, the definition of original Italian-language audiovisual works, wherever produced, with particular reference to one or more elements such as culture, history, identity, creativity, language or places is established, on the basis of the principles of proportionality, adequacy, transparency and effectiveness.
2. The Regulation referred to in this Article shall be adopted by 30 June 2024 and shall be updated at least every three years, including on the basis of annual reports prepared respectively by the Authority pursuant to Article 56(6) and by the Directorate-General Cinema and Audiovisual, of the Ministry for Culture, in accordance with Article 12(6) of Law No 220 of 14 November 2016 as well as the results achieved by the works promoted through the fulfilment of the investment obligations and the effectiveness of the contractual conditions used.’

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